

Office of the Secretary, Education

§ 5.85

(a) *Intra-agency and inter-agency communications.* Communications within the Department other than those described in § 5.72(d) or between the Department or any other agency within the meaning of 5 U.S.C. 551(1) and 552(e), to the extent they reflect the views or judgment of the writer or of other individuals. If disclosure of any factual portion of the communication would indicate the views or judgment being withheld from disclosure, then such factual portions will also be withheld.

(b) *Investigatory files.* Investigatory files compiled for law enforcement purposes to the extent that production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures or (6) endanger the life or physical safety of law enforcement personnel. For the purpose of this section *enforcement action* means any authorized action intended to abate, prevent, counteract, deter, or terminate violations of law and includes action involving possible civil, criminal, or administrative sanctions whether such sanctions involve adversary proceedings or other procedures, such as termination of benefits, protective measures, etc.

§ 5.74 Further disclosure.

(a) The Secretary may in particular instances, except where prohibited by law, disclose documents or portions of documents described in § 5.73 if he determines that disclosure is in the public interest and is consistent with obligations of confidentiality and administrative necessity.

(b) In making such a determination, consideration may be given to the Department's responsibilities under law for dissemination to the public of information relating to education.

(c) When such determination has been made, the particular document or portion of document to which it relates shall thereafter be available upon request for inspection and copying: *Provided however,* That use of nondiscloseable records or information from such records for authorized program purposes, including law enforcement purposes and litigation is not a disclosure within the meaning of this section.

Subpart G—Administrative Review

§ 5.80 Review of denial of a record.

This subpart provides for the review of a denial, pursuant to § 5.53, of a written request for inspection or copying of a record.

§ 5.81 Time for initiation of request for review.

A person whose request has been denied may initiate a review by filing a request for review within (a) 30 days of receipt of the determination to deny or (b) within 30 days of receipt of records which are in partial response to his request if a portion of a request is granted and a portion denied, whatever is later.

§ 5.82 By whom review is made.

(a) Requests for review of denials should be addressed to the Secretary.

(b) [Reserved]

§ 5.83 Contents of request for review.

The request for review shall include a copy of the written request and the denial.

§ 5.84 Consideration on review.

Review shall be considered on the basis of the written record including any written argument submitted by the requester.

§ 5.85 Decisions on review.

(a) Decisions on review shall be in writing within 20 working days from receipt of the request for review. Extension of the time limit may be granted to the extent that the maximum 10-day limit on extensions has not been exhausted on the initial determination.

Pt. 5, App.

34 CFR Subtitle A (7–1–02 Edition)

Such extension may only be granted for the reasons enumerated in §5.51(d).

(b) The decision, which constitutes final action of the Department, if adverse to the requester shall be in writing, stating the reasons for the decision, and advising the requester of the

right to judicial review of such decision.

(c) Failure to comply with time limits set forth in §5.51 or in this paragraph constitutes an exhaustion of the requester's administrative remedies.

APPENDIX TO PART 5

(The following are some examples of specific records (or specific information relating to personnel, programs, or activities of this Department) listed according to whether or not they are available upon request for inspection and copying)

Generally available	Generally not available
GRANTS	
Funded initial grant applications, subject to provisions of §5.71. Reports of grantee. Final report of any review or evaluation of grantee performance conducted or caused to be conducted by the Department. Applications for continuation, renewal, or supplemental grants, subject to provisions of §5.71. State plan material.	Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature submitted with initial applications not yet funded, or where disclosure would adversely affect patent or other valuable rights. Confidential financial information of grantee. Site visit reports. Initial research or research training grant application on which award is not made.
CONTRACTS	
Name of contractor, subject matter, date, and amount of contract. Contract performance review report Deficiency report Final report	Trade secrets. Confidential pricing data contained in contract proposal if in the Department's judgment it is properly so designated by the offeror. Proprietary technical data contained in a contract proposal if in the Department's judgment it is properly so designated by offeror. Confidential financial information of contractor Draft of proposed final report submitted for comment prior to acceptance. Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature, including proprietary contents of unsolicited proposals. Proposals on which no award is made.
ADVISORY COMMITTEES	
Name of committee Final report Minutes or transcripts of meetings open to the public and not involved with matters exempt from mandatory disclosure under Freedom of Information Act.	Minutes or transcripts of committee meetings or portions thereof which are involved with matters exempt from mandatory disclosure under Freedom of Information Act.
PERSONNEL INFORMATION	
Name of employee, title of position, and location of regular duty station. Grade, position description, and salary of public employees.	Home addresses of employees.
AFFIRMATIVE ACTION PLAN FILED PURSUANT TO EXECUTIVE ORDER 11246	
Approved action plan, including analysis, proposed remedial or affirmative steps to be taken with goals and timetables, policies on recruitment, hiring, and promotion, and description of grievance procedures.	
MISCELLANEOUS	
	Names of individual beneficiaries of departmental programs or a list of the benefits they receive if release would be an unwarranted invasion of privacy. Office for Civil Rights investigatory files in open cases.